

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF MISSISSIPPI  
GREENVILLE DIVISION**

**DAVID LEE HARBIN**

**PLAINTIFF**

**V.**

**NO. 4:17-CV-45-DMB-RP**

**WARDEN MARSHAL TURNER,  
COMMISSIONER FELICIA HALL,  
SUPERINTENDENT JACQUELYN BANKS,  
WARDEN TIMOTHY MORRIS,  
SUPERINTENDENT EARNEST LEE**

**DEFENDANTS**

**ORDER ADOPTING REPORT AND RECOMMENDATION**

On July 20, 2017, following a *Spears*<sup>1</sup> hearing, United States Magistrate Judge Roy Percy issued a Report and Recommendation recommending that all of David Lee Harbin's claims be dismissed for failure to state a claim upon which relief could be granted because "none of [Harbin's] allegations state a constitutional claim against any defendant." Doc. #14 at 9. The Report and Recommendation warned that failure to file written objections within fourteen days would limit review of the Report and Recommendation to plain error. *Id.* at 10.

Harbin acknowledged receipt of the Report and Recommendation on August 2, 2017. Doc. # 15. To date, no objections to the Report and Recommendation have been filed.<sup>2</sup> Accordingly, the Court's review of the Report and Recommendation is limited to plain error. *Morales v. Mosley*, No. 3:13-cv-848, 2014 WL 5410326, at \*2 (S.D. Miss. Oct. 22, 2014) (citing *Shelby v. City of El Paso*, 577 F. App'x 327, 331 (5th Cir. 2014) ("When there has been no objection to a report and recommendation, review is limited to plain error.")). Under this standard, the reviewing court only

---

<sup>1</sup> *Spears v. McCotter*, 776 F.2d 179 (5th Cir. 1985).

<sup>2</sup> On or about September 7, 2017, Harbin filed a letter with this Court describing an incident in which he was "brutally [sic] assaulted" by gang members. Doc. #16 at 1. The letter, however, makes no mention of the Report and Recommendation and does not mention any of the factual findings or legal conclusions included in the Report and Recommendation. *See id.* at 1-3.

reverses errors that are clear, obvious, and affect substantial rights. *DeCorte v. Jordan*, 497 F.3d 433, 441 (5th Cir. 2007).

The Court has reviewed the Report and Recommendation and found no plain error. Accordingly:

1. The Report and Recommendation [14] is **ADOPTED** as the order of the Court;
2. This case is **DISMISSED** for failure to state a claim; and
3. This case is **CLOSED**.

**SO ORDERED**, this 28th day of December, 2017.

/s/Debra M. Brown  
**UNITED STATES DISTRICT JUDGE**